

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HOUSE BILL 2361

AN ACT

AMENDING SECTIONS 12-1173.01, 12-1175, 12-1176, 12-1177, 12-1178 AND 12-1179, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 8, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 12-1173.02 AND 12-1175.01; RELATING TO FORCIBLE ENTRY AND DETAINER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1173.01, Arizona Revised Statutes, is amended to
3 read:

4 12-1173.01. Additional definition of forcible detainer

5 A. In addition to other persons enumerated in this article, a person
6 in any of the following cases who retains possession of any land, tenements
7 or other real property after ~~he receives~~ RECEIVING written demand of
8 possession may be removed through an action for forcible detainer THAT IS
9 filed with the clerk of the superior court ~~in accordance with~~ OR A JUSTICE OF
10 THE PEACE PURSUANT TO this article:

11 1. If the property has been sold through the foreclosure of a
12 mortgage, deed of trust or contract for conveyance of real property pursuant
13 to title 33, chapter 6, article 2.

14 2. If the property has been sold through a trustee's sale under a deed
15 of trust pursuant to title 33, chapter 6.1.

16 3. If the property has been forfeited through a contract for
17 conveyance of real property pursuant to title 33, chapter 6, article 3.

18 4. If the property has been sold by virtue of an execution and the
19 title has been duly transferred.

20 5. If the property has been sold by the owner and the title has been
21 duly transferred.

22 B. The remedies provided by this section do not affect the rights of
23 persons in possession under a lease or other possessory right ~~which~~ THAT is
24 superior to the interest sold, forfeited or executed upon.

25 C. The remedies provided by this section are in addition to and do not
26 preclude any other remedy granted by law.

27 D. IF THE CASE IS BEFORE A JUSTICE OF THE PEACE AND THE DEFENDANT
28 PROVIDES CREDIBLE EVIDENCE THAT THE SALE OF ANY PROPERTY SUBJECT TO THIS
29 SECTION WAS DEFECTIVE OR INVALID, THE JUSTICE OF THE PEACE SHALL REFER THE
30 MATTER TO THE SUPERIOR COURT.

31 Sec. 2. Title 12, chapter 8, article 4, Arizona Revised Statutes, is
32 amended by adding section 12-1173.02, to read:

33 12-1173.02. Rent; notice; disposition of personal property

34 A. A PERSON WHO WRONGFULLY RETAINS POSSESSION OF REAL PROPERTY OF
35 ANOTHER IS LIABLE FOR RENT FOR THE USE AND OCCUPANCY OF THE PREMISES.

36 B. AT LEAST FIVE DAYS BEFORE THE COMMENCEMENT OF ANY FORCIBLE DETAINER
37 ACTION A PARTY WHO HOLDS POSSESSION OF A RESIDENTIAL UNIT OTHER THAN THROUGH
38 A RENTAL AGREEMENT SHALL BE GIVEN A NOTICE DEMANDING SURRENDER OF POSSESSION
39 OF THE PREMISES. THE NOTICE PROVISIONS OF SECTION 33-1313 APPLY TO THIS
40 SECTION.

41 C. EXCEPT AS PROVIDED IN SECTION 33-1368, SUBSECTIONS E AND F AND
42 SECTION 33-1370, THE LANDLORD MAY NOT DISPOSE OF ANY PERSONAL PROPERTY THAT
43 IS ON THE PREMISES OF A PERSON WHO IS OCCUPYING THE PREMISES FOR RESIDENTIAL
44 PURPOSES AND WHO IS NOT SUBJECT TO TITLE 33, CHAPTER 10.

1 Sec. 3. Section 12-1175, Arizona Revised Statutes, is amended to read:
2 12-1175. Complaint and answer; service and return

3 A. When a party aggrieved files a complaint of forcible entry or
4 forcible detainer, in writing and under oath, with the clerk of the superior
5 court or a justice of the peace, summons shall issue no later than the next
6 judicial day.

7 B. The complaint shall contain a description of the premises of which
8 possession is claimed in sufficient detail to identify ~~them~~ THE PREMISES and
9 shall also state the facts which entitle the plaintiff to possession and
10 authorize the action.

11 ~~C. The summons shall be served at least two days before the return~~
12 ~~day, and return made thereof on the day assigned for trial.~~

13 C. SERVICE OF THE SUMMONS AND COMPLAINT IN A SPECIAL DETAINER ACTION
14 AND IN A FORCIBLE DETAINER ACTION SHALL BE MADE PURSUANT TO SECTION 33-1377.

15 D. THE SUMMONS SHALL SET FORTH SPECIFIC INFORMATION PRESCRIBED BY
16 COURT RULE TO ENABLE THE DEFENDANT TO DETERMINE THE LOCATION AND TELEPHONE
17 NUMBER OF THE COURT, THE DATE AND TIME SET FOR TRIAL AND THE CONSEQUENCES OF
18 FAILING TO APPEAR. THE COMPLAINT SHALL CLEARLY IDENTIFY THE PLAINTIFF, THE
19 LOCATION OF THE PROPERTY AT ISSUE, THE NATURE AND CONSEQUENCES OF THE
20 PROCEEDING, THE SPECIFIC RELIEF BEING SOUGHT AND THE REASONS FOR THE RELIEF
21 SOUGHT.

22 Sec. 4. Title 12, chapter 8, article 4, Arizona Revised Statutes, is
23 amended by adding section 12-1175.01, to read:

24 12-1175.01. Counterclaims; cross-claims

25 A. A COUNTERCLAIM MAY BE FILED ONLY PURSUANT TO STATUTE IN A SPECIAL
26 DETAINER ACTION OR FORCIBLE DETAINER ACTION AS PRESCRIBED BY COURT RULE.

27 B. A CROSS-CLAIM OR THIRD PARTY COMPLAINT MAY NOT BE FILED IN A
28 FORCIBLE OR SPECIAL DETAINER ACTION.

29 Sec. 5. Section 12-1176, Arizona Revised Statutes, is amended to read:
30 12-1176. Demand for jury; trial procedure

31 A. The clerk or justice of the peace shall at the time of issuing the
32 summons, if requested by the plaintiff, issue a venire to the sheriff or
33 constable of the county commanding him to summon a jury of eight persons, if
34 the proceeding is in the superior court, and six persons, if THE PROCEEDING
35 IS in the justice court, WHO ARE qualified jurors of the county, to appear on
36 the day set for trial to serve as jurors in the action. The venire shall be
37 served and returned on the day assigned for trial. The trial date shall be
38 no more than five judicial days after the aggrieved party files the
39 complaint.

40 B. If the plaintiff does not request a jury, the defendant may do so
41 when he appears, and the jury shall be summoned in the manner set forth in
42 subsection A.

43 C. IF A JURY TRIAL IS DEMANDED AND THE COURT FINDS THAT THE PARTY
44 MAKING THE DEMAND HAS VALIDLY WAIVED THE RIGHT TO A JURY TRIAL, THE JURY

1 TRIAL DEMAND SHALL BE DENIED AND THE MATTER SHALL PROCEED TO A TRIAL BY THE
2 COURT.

3 ~~D.~~ D. If any jurors fail to attend, or are excused after being
4 challenged, the jury shall be completed by causing other qualified jurors to
5 be summoned immediately.

6 ~~D.~~ E. The action shall be docketed and tried as other civil actions.

7 Sec. 6. Section 12-1177, Arizona Revised Statutes, is amended to read:

8 12-1177. Trial and issue; postponement of trial

9 A. On the trial of an action of forcible entry, SPECIAL DETAINER or
10 forcible detainer, the only issue shall be the right of actual possession and
11 the merits of title shall not be inquired into. IF A PERMISSIBLE
12 COUNTERCLAIM HAS BEEN FILED, THE COURT SHALL DECIDE THE COUNTERCLAIM BY
13 DETERMINING THE AMOUNT OF DAMAGES IF THE COURT FINDS IN FAVOR OF THE
14 DEFENDANT OR BY DISMISSING THE COUNTERCLAIM IF THE COURT FINDS IN FAVOR OF
15 THE PLAINTIFF.

16 B. If a jury is demanded PURSUANT TO SECTION 12-1176, ~~IT~~ THE JURY
17 shall return a verdict of guilty or not guilty of the charge as stated in the
18 complaint AND SHALL DECIDE ANY PERMISSIBLE COUNTERCLAIM. If a jury is not
19 demanded OR HAS BEEN VALIDLY WAIVED, the action shall be tried by the court.

20 C. For good cause shown, ~~supported by affidavit,~~ the trial may be
21 postponed for a time not to exceed three calendar days in a justice court or
22 ten calendar days in the superior court.

23 D. AT TRIAL THE COURT SHALL DETERMINE THE RELIEF THE PLAINTIFF IS
24 ENTITLED TO, IF ANY. IF A PERMISSIBLE COUNTERCLAIM HAS BEEN FILED, THE COURT
25 SHALL DETERMINE THE RELIEF THE DEFENDANT IS ENTITLED TO, IF ANY.

26 Sec. 7. Section 12-1178, Arizona Revised Statutes, is amended to read:

27 12-1178. Judgment; writ of restitution; limitation on issuance

28 A. If the defendant is found guilty, the court shall give judgment for
29 the plaintiff for restitution of the premises, for all charges stated in the
30 rental agreement and for damages, attorney fees, court and other costs and,
31 at the plaintiff's option, ~~for~~ all rent found to be due and unpaid through
32 the periodic rental period, as described in section 33-1314, subsection C, as
33 provided for in the rental agreement, and shall grant a writ of
34 restitution. ~~If the defendant's social security number is contained on the~~
35 ~~complaint at the time of judgment, the person designated by the judge to~~
36 ~~prepare the judgment shall ensure that the defendant's social security number~~
37 ~~is contained on the judgment.~~

38 B. If the defendant is found not guilty, judgment shall be given for
39 the defendant against the plaintiff for damages, attorney fees, ~~AND~~ court
40 and other costs, and if it appears that the plaintiff has acquired possession
41 of the premises since commencement of the action, IF REQUESTED, a writ of
42 restitution shall issue in favor of the defendant UNLESS POSSESSION HAS
43 THEREAFTER BEEN TRANSFERRED TO A NONPARTY TO THE ACTION. IF JUDGMENT IS
44 GIVEN FOR A DEFENDANT ON A COUNTERCLAIM, THE JUDGMENT SHALL INCLUDE DAMAGES
45 IN AN AMOUNT DETERMINED BY THE COURT.

1 C. EXCEPT AS PROVIDED IN SECTION 33-1377, SECTION 33-1485 AND SECTION
2 33-2143, SUBSECTION D, PARAGRAPH 3, no writ of restitution shall issue until
3 the expiration of five calendar days after the rendition of judgment. The
4 writ of restitution shall be enforced as promptly and expeditiously as
5 possible. The issuance or enforcement of a writ of restitution shall not be
6 suspended, delayed, or otherwise affected by the filing of a motion to set
7 aside or vacate the judgment or similar motion unless a judge finds good
8 cause.

9 D. THE COURT SHALL ENTER A DEFAULT JUDGMENT AGAINST THE DEFENDANT IF
10 THE DEFENDANT FAILS TO APPEAR AND THE COURT DETERMINES THAT THE ACTION HAS
11 BEEN PROPERLY FILED AND SERVED AND THAT THE PLAINTIFF IS ENTITLED TO THE
12 RELIEF BEING SOUGHT.

13 E. IN ANY SPECIAL DETAINER OR FORCIBLE DETAINER ACTION THAT IS BROUGHT
14 FOLLOWING EXPIRATION OR TERMINATION OF A TENANCY PURSUANT TO TITLE 33,
15 CHAPTER 10, 11 OR 19 FOR POSSESSION OF A PROPERTY USED FOR RESIDENTIAL
16 PURPOSES, IF THE DEFENDANT APPEARS FOR TRIAL AND ADMITS THE ALLEGATIONS THE
17 COURT SHALL ENTER JUDGMENT IN FAVOR OF THE PLAINTIFF.

18 F. IN ANY SPECIAL DETAINER OR FORCIBLE DETAINER ACTION THAT IS BROUGHT
19 FOLLOWING EXPIRATION OR TERMINATION OF A TENANCY PURSUANT TO TITLE 33,
20 CHAPTER 10, 11 OR 19 FOR POSSESSION OF A PROPERTY USED FOR RESIDENTIAL
21 PURPOSES, THE COURT SHALL GRANT THE FOLLOWING RELIEF ON THE ENTRY OF A
22 JUDGMENT:

23 1. EXCEPT AS PROVIDED IN PARAGRAPH 2 OF THIS SUBSECTION, IF THE
24 JUDGMENT IS FOR THE PLAINTIFF, THE COURT SHALL AWARD POSSESSION OF THE
25 PREMISES TO THE PLAINTIFF. A WRIT OF RESTITUTION SHALL NOT BE ISSUED UNTIL
26 THE EXPIRATION OF FIVE CALENDAR DAYS AFTER RENDITION OF THE JUDGMENT.

27 2. IF AN IMMEDIATE TERMINATION HAS BEEN REQUESTED AND ORDERED DUE TO A
28 BREACH THAT IS BOTH MATERIAL AND IRREPARABLE PURSUANT TO SECTION 33-1368 OR
29 SECTION 33-1485, THE JUDGMENT SHALL PROVIDE FOR THE WRIT OF RESTITUTION TO
30 ISSUE BETWEEN TWELVE AND TWENTY-FOUR HOURS AFTER THE ENTRY OF JUDGMENT OR
31 LONGER IF THE PLAINTIFF REQUESTS.

32 3. IF THE JUDGMENT IS FOR THE DEFENDANT AND THE PLAINTIFF HAS
33 POSSESSION OF THE PREMISES, THE DEFENDANT MAY REQUEST POSSESSION OF THE
34 PREMISES WITH A WRIT OF RESTITUTION TO ISSUE AFTER FIVE CALENDAR DAYS.

35 4. A WRIT OF RESTITUTION DATE SHALL NOT BE DELAYED OR EXTENDED BEYOND
36 THE DATE ORDERED UNLESS THE PARTIES STIPULATE OTHERWISE.

37 5. IN ADDITION TO DETERMINING THE RIGHT TO POSSESSION, THE COURT MAY
38 ASSESS DAMAGES AS FOLLOWS:

39 (a) THE COURT SHALL AWARD RENT TO A PREVAILING PLAINTIFF TOGETHER WITH
40 ANY ADDITIONAL PERIODIC RENT THAT HAS ACCRUED SINCE THE COMPLAINT WAS FILED,
41 IF REQUESTED IN THE COMPLAINT. IN THE CASE OF AN UNEXPIRED LEASE, RENT
42 THROUGH THE BALANCE OF THE LEASE TERM SHALL NOT BE AWARDED.

43 (b) IF THE LANDLORD CHARGED UTILITIES TO THE DEFENDANT UNDER A RENTAL
44 AGREEMENT, THE COURT SHALL AWARD ANY UNPAID AMOUNT TO A PREVAILING PLAINTIFF.

1 (c) IF A WRITTEN RENTAL AGREEMENT PROVIDES FOR PERIODIC LATE CHARGES
2 IN THE EVENT OF A RENT DEFAULT, THE COURT SHALL AWARD THE PREVAILING
3 PLAINTIFF REASONABLE LATE CHARGES. IN AN ACTION INVOLVING A MOBILE HOME PARK
4 OR A RECREATIONAL VEHICLE PARK THE COURT SHALL LIMIT THE AWARD OF PERIODIC
5 LATE CHARGES TO THE STATUTORY AMOUNT AND THE COURT SHALL NOT REDUCE A LATE
6 CHARGE CALCULATED IN ACCORDANCE WITH THAT LIMITATION.

7 (d) THE COURT MAY AWARD TO THE PREVAILING PLAINTIFF ANY FEES THAT ARE
8 SPECIFIED IN A WRITTEN RENTAL AGREEMENT AND THAT ARE COLLECTED PERIODICALLY
9 TOGETHER WITH OTHER RENTAL CHARGES.

10 (e) IF THE PLAINTIFF PREVAILS, THE COURT MAY AWARD DAMAGES FOR BREACH
11 OF THE RENTAL AGREEMENT INCLUDING PROPERTY DAMAGES.

12 (f) IF A DEFENDANT PREVAILS ON A COUNTERCLAIM, THE COURT SHALL AWARD
13 DAMAGES AND SHALL DETERMINE THE PREVAILING PARTY FOR THE PURPOSES OF AWARING
14 COSTS AND REASONABLE ATTORNEY FEES.

15 (g) THE COURT SHALL AWARD COURT COSTS PURSUANT TO SECTION 12-341.

16 (h) IF THE COURT FINDS THAT A RENTAL AGREEMENT OR LEASE PROVIDES A
17 RENT CONCESSION THAT IN THE EVENT OF A DEFAULT BECOMES DUE AND PAYABLE THE
18 COURT SHALL INCLUDE THE AMOUNT OF THE CONCESSION AS ADDITIONAL DAMAGES IN THE
19 JUDGMENT TO A PREVAILING PLAINTIFF, IF PLED IN THE COMPLAINT, UNLESS THE
20 COURT FINDS GOOD CAUSE TO NOT AWARD THE RENT CONCESSION.

21 (i) THE COURT SHALL AWARD REASONABLE ATTORNEY FEES TO THE PREVAILING
22 PARTY IF THE FEES ARE PROVIDED FOR BY STATUTE OR IN A WRITTEN CONTRACT. THE
23 AWARD MAY NOT EXCEED THE AMOUNT THE PARTY HAS PAID OR AGREED TO PAY.

24 G. THE COURT SHALL PROMPTLY ISSUE A WRIT OF RESTITUTION ON TIMELY
25 APPLICATION. A JUDGE, A JUSTICE OF THE PEACE OR THE CLERK OF THE SUPERIOR
26 COURT MAY ISSUE THE WRIT OF RESTITUTION IF IT APPEARS THAT A JUDGMENT
27 GRANTING POSSESSION HAS BEEN ENTERED IN FAVOR OF THE PARTY FILING THE WRIT
28 AND THE ACTION HAS NOT BEEN STAYED SUBJECT TO THE FOLLOWING CONDITIONS:

29 1. UNLESS THE COURT FINDS GOOD CAUSE, THE ISSUANCE OR THE ENFORCEMENT
30 OF A WRIT OF RESTITUTION WILL NOT BE SUSPENDED, DELAYED OR OTHERWISE AFFECTED
31 BY THE FILING OF A MOTION TO SET ASIDE OR VACATE THE JUDGMENT OR SIMILAR
32 MOTION.

33 2. THE WRIT OF RESTITUTION SHALL BE ENFORCED AS PROMPTLY AND
34 EXPEDITIOUSLY AS POSSIBLE. THE CONSTABLE OR SHERIFF EXECUTING THE WRIT SHALL
35 NOT DELAY EXECUTION OF THE WRIT UNLESS THE COURT ORDERS A DELAY OR SUSPENSION
36 OF ENFORCEMENT OF THE WRIT PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION OR THE
37 PARTY ATTEMPTING TO ENFORCE THE WRIT AGREES TO OR REQUESTS A DELAY IN
38 WRITING. NOTWITHSTANDING THIS, IN EXECUTING THE WRIT, THE SHERIFF OR
39 CONSTABLE HAS THE AUTHORITY TO:

40 (a) IF THERE IS NO RESPONSE WHEN THE SHERIFF OR CONSTABLE ANNOUNCES
41 HIS PRESENCE, ENTER THE PREMISES WITH THE USE OF FORCE IF NECESSARY FOR THE
42 PURPOSE OF DETERMINING WHETHER IT IS OCCUPIED.

43 (b) REMOVE ANY AND ALL OCCUPANTS WHO REFUSE TO PEACEFULLY VACATE THE
44 PREMISES WITH THE USE OF FORCE IF NECESSARY, ADVISE THE OCCUPANT AND THE
45 LANDLORD THAT THE OCCUPANT MAY REMOVE CLOTHING, TOOLS OF THE TRADE AND

1 IDENTIFICATION DOCUMENTS AT ANY TIME WITHOUT CHARGE, EXPLAIN THAT THE
2 OCCUPANT'S PROPERTY WILL BE INVENTORIED AND STORED AND EXPLAIN THE PROCESS TO
3 OBTAIN THE PROPERTY.

4 (c) GRANT A REASONABLE AMOUNT OF TIME, NOT TO EXCEED THREE CALENDAR
5 DAYS FROM THE DATE OF SERVICE, FOR THE OCCUPANTS TO VACATE WHEN IN THE
6 JUDGMENT OF THE SHERIFF OR CONSTABLE AN EXTENSION OF TIME IS JUSTIFIED BY
7 EXIGENT CIRCUMSTANCES.

8 (d) REQUIRE THE OCCUPANT OF THE PREMISES TO REMOVE ANY HOUSEHOLD PETS
9 FOUND IN THE HOME OR, IF THE PREMISES ARE UNOCCUPIED, REQUIRE THE PARTY
10 ENTITLED TO POSSESSION TO REMOVE ANY HOUSEHOLD PETS AND TO PLACE THEM WITH
11 APPROPRIATE AUTHORITIES FOR SAFEKEEPING.

12 (e) AUTHORIZE THE PARTY ENTITLED TO POSSESSION TO INSTALL APPROPRIATE
13 DEVICES ON ALL DOORS AND WINDOWS TO PREVENT REENTRY BY THE OCCUPANTS AFTER
14 THE HOME IS VACATED.

15 (f) POST AN APPROPRIATE NOTICE OF EVICTION ON THE HOME OR ON THE
16 INTERIOR OF A FRONT WINDOW OF THE HOME.

17 3. A PARTY WHO OBTAINS A JUDGMENT FOR POSSESSION HAS UP TO FORTY-FIVE
18 DAYS TO APPLY FOR A WRIT OF RESTITUTION.

19 4. IF A PARTY APPLIES FOR A WRIT OF RESTITUTION MORE THAN FORTY-FIVE
20 DAYS AFTER THE DATE OF JUDGMENT, THE PARTY SHALL EXPLAIN THE REASON FOR THE
21 DELAY IN MAKING THE APPLICATION AND SHALL CERTIFY THAT THE TENANCY HAS NOT
22 BEEN REINSTATED SINCE THE DATE OF THE JUDGMENT. THE COURT SHALL DETERMINE
23 WHETHER TO ISSUE THE WRIT PURSUANT TO COURT RULE.

24 5. AFTER A WRIT OF RESTITUTION IS ISSUED, A PARTY MAY FILE A MOTION TO
25 QUASH THE WRIT. IF THE COURT FINDS GOOD CAUSE TO BELIEVE THAT THE WRIT WAS
26 IMPROPERLY APPLIED FOR OR ISSUED THE COURT MAY STAY ENFORCEMENT AND SCHEDULE
27 A HEARING ON THE MOTION. THE HEARING SHALL BE CONDUCTED WITHIN THREE
28 BUSINESS DAYS AFTER THE FILING OF THE MOTION.

29 Sec. 8. Section 12-1179, Arizona Revised Statutes, is amended to read:
30 12-1179. Appeal to superior court; notice; bond

31 A. Either party may appeal from a justice court to the superior court
32 in the county in which the judgment is given by giving notice as in other
33 civil actions within five calendar days after rendition of the judgment
34 pursuant to this section. The appeal shall be filed in accordance with this
35 section, and the time to appeal shall not be extended or otherwise affected
36 by the filing of a motion to set aside or vacate the judgment or similar
37 motion.

38 B. A party seeking to appeal a judgment shall file with the notice of
39 appeal a bond **IN THE AMOUNT OF TWO HUNDRED DOLLARS** for costs on appeal. ~~The~~
40 ~~justice of the peace shall set the bond in an amount sufficient to cover the~~
41 ~~costs on appeal.~~ The bond shall be payable to the clerk of the justice
42 court. If a party is unable to file a bond for costs on appeal, the party
43 shall file with the justice court a notice of appeal along with an affidavit
44 stating that the party is unable to give bond for costs on appeal and the
45 reasons therefor. Within five court days after the filing of the affidavit,

1 any other party may file, in the justice court, objections to the
2 affidavit. The justice of the peace shall hold a hearing on the affidavit
3 and objections within five court days thereafter. If the justice court
4 sustains the objections, the appellant shall file, within five court days
5 thereafter, a bond for costs on appeal as provided for in this section or in
6 ~~such~~ A lesser amount as ordered by the justice court.

7 C. A party seeking to appeal a judgment may stay the execution of
8 either the judgment for possession or any judgment for money damages by
9 filing a supersedeas bond. The justice court shall hold a hearing on the
10 motion within five court days after the parties advise the justice court of
11 their failure to stipulate on the amount of the bond. The stay is effective
12 when the supersedeas bond or bonds are filed.

13 D. The party seeking to stay the execution of the judgment for
14 possession shall file a supersedeas bond in the amount of rent accruing from
15 the date of the judgment until the next periodic rental date, together with
16 costs and attorney fees, if any. The tenant shall pay to the clerk of the
17 justice court, on or before each periodic rental due date during the pendency
18 of the appeal, the amount of rent, UTILITIES AND OTHER RELATED CHARGES due
19 under the terms of the lease or rental agreement. Such amounts shall be made
20 payable by the justice court to the owner, landlord or agent as they accrue
21 to satisfy the amount of periodic rent due under the lease or rental
22 agreement. In all cases where the rent due under the terms of the lease or
23 rental agreement is paid through the justice court as set forth in this
24 subsection, the order of the court may include a one-time handling fee in the
25 amount of ten dollars to be paid by the party seeking to stay the execution
26 of the judgment for possession. In no event shall the amounts paid per month
27 exceed the amount of monthly rent charged by the owner for the premises. If
28 the tenant IN A SPECIAL DETAINER ACTION raises habitability as provided for
29 in sections 33-1324 and 33-1364 as an affirmative defense to the nonpayment
30 of rent or the tenant has filed a counterclaim asserting a habitability
31 issue, the justice court shall retain all money paid under this subsection
32 pending a final judgment.

33 E. If during the pendency of the appeal the party seeking to stay the
34 execution of the judgment for possession fails to pay the rent AND OTHER
35 CHARGES on OR BEFORE the periodic rental due date, the party in whose favor a
36 judgment for possession was issued may move the justice court to lift the
37 stay of the execution of the judgment for possession. The justice court
38 shall hear the motion to lift the stay of the execution of the judgment for
39 possession and release accrued monies, if any, within five court days from
40 the failure of the party to pay the periodic rent due under the terms of the
41 lease or rental agreement. If the judgment appealed from involves a finding
42 of a material and irreparable breach pursuant to section 33-1368 or section
43 33-1476, subsection D, paragraph 3 the justice court shall treat it as an
44 emergency matter and conduct a hearing on a motion to lift the stay of
45 execution of the writ of restitution within three days. If the third day is

1 a Saturday, Sunday or other legal holiday, the hearing shall be held on the
2 next day thereafter.

3 F. The party seeking to stay the execution of the judgment for money
4 damages shall file a supersedeas bond in the amount of the judgment, together
5 with costs and attorney fees, if any. The amount of the bond shall be fixed
6 by the court and payable to the clerk of the justice court.

7 G. IF THE JUDGMENT APPEALED FROM HAS A FINDING OF A MATERIAL AND
8 IRREPARABLE BREACH BY THE TENANT OF A DWELLING UNIT OR A TENANT IN A MOBILE
9 HOME PARK OR RECREATIONAL VEHICLE PARK, THE COURT MAY DECIDE NOT TO PERMIT
10 RENTS TO BE DEPOSITED AND MAY ALLOW A WRIT OF RESTITUTION TO BE ENFORCED
11 NOTWITHSTANDING THE APPEAL OR THE COURT MAY IMPOSE SUCH CONDITIONS IN
12 ADDITION TO THE DEPOSIT OF RENTS AS IT DEEMS APPROPRIATE IN THE INTERESTS OF
13 SAFETY. IF THE COURT DETERMINES THAT PERSONAL INJURY OR SERIOUS PROPERTY
14 DAMAGE IS UNLIKELY TO OCCUR WHILE THE APPEAL IS PENDING OR THAT SERIOUS
15 CRIMINAL CONDUCT IS UNLIKELY TO TAKE PLACE ON THE PREMISES, THE COURT SHALL
16 PERMIT RENTS TO BE DEPOSITED. IF RENT PAYMENTS ARE NOT KEPT CURRENT PURSUANT
17 TO SUBSECTION D OF THIS SECTION OR IF ADDITIONAL PROHIBITED ACTS OF CONDUCT
18 BY THE APPELLANT OCCUR, A MOTION TO LIFT THE STAY MAY BE FILED. THE COURT
19 SHALL TREAT A MOTION TO LIFT THE STAY OF EXECUTION OF THE WRIT OF RESTITUTION
20 AS AN EMERGENCY MATTER AND CONDUCT A HEARING WITHIN THREE DAYS. IF THE THIRD
21 DAY IS A SATURDAY, SUNDAY OR OTHER LEGAL HOLIDAY THE HEARING SHALL BE HELD ON
22 THE NEXT COURT DAY.